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Message

Re: Applicant : Thomas LENZ, et al.
Serial No. : 09/618,853
Filing Date : July 18, 2000
Title : PROCESS FOR AUTOMATIC
DRIVE SLIP CONTROL (ASR)
Att'y Docket : 76138/111

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Examiner Avery:

Attached please find the following in response to the Office Action dated May 31, 2001:

1) Request for Reconsideration

Please contact Charles Guttman at (212) 969-3180 if there are any questions.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 3661
Examiner: T. TO

Applicant : Thomas LENZ, et al.
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REQUEST FOR RECONSIDERATION

Sir:

Responsive to the Office Action dated May 31, 2001, applicants respectfully request reconsideration of the grounds for rejection contained therein.

Claim 1-9 are pending in the application. Of the foregoing, only claim 9 is independent.

In the Office Action dated May 31, 2001, the Examiner rejected claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,082,081 (Tsuyama et al.) in view of U.S. 5,342,120 (Zimmer et al.). With respect to claims 1-5, the Examiner stated that Tsuyama et al. discloses a method for adjusting the normal drive slip value of the ASR system "except for the driven wheels are rear wheels." The Examiner further stated that Zimmer et al. disclose an ABS/ASR control unit and "mentions that the driven wheels are rear wheel [sic]." The Examiner

concluded that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Tsuyama et al.'s method to include the teachings of Zimmer et al. "so that the driver is able to drive vehicle safe[l]y while traveling in a condition of deep snow or wet road."

With regard to claims 6-8, the Examiner stated that Tsuyama et al. disclose a method for adjusting the normal drive slip value of the ASR system, wherein the increase of the normal drive slip value is limited in dependence on the current vehicle speed. The Examiner further stated "that the obviousness can only be established by combining Tsuyama et al. and Zimmer et al. to produce the claimed invention." It is unclear whether the Examiner intended this latter statement to apply only to claims 6-8 or to all of the claims. Nor did the Examiner explain the purpose of this statement.

Applicants respectfully traverse the rejection under 35 U.S.C. 103(a). It is submitted that the Examiner has failed to present in a cogent manner a *prima facie* case for obviousness. Therefore, withdrawal of the rejection under 35 U.S.C. 103(a) is requested.

In particular, applicants' invention, as set forth in claim 1, is directed to a method for adjusting the normal drive slip value of an ASR system in a vehicle equipped with an ASR system and operating in a rear wheel drive mode. The foregoing is explicitly stated in the preamble of claim 1. The body of claim 1 states that the inventive method comprises:

- "(a) evaluating dynamic values associated with the front wheels of the vehicle, and
- (b) if the dynamic values associated with the front wheels exceed a threshold value, increasing the normal drive slip value for the rear wheels." (Emphasis added.)

According to the MPEP, in order to reject claims under 35 U.S.C. 103 (a), the Examiner should set forth in the Office Action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the implied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

M.P.E.P. 706.02. In order to establish a *prima facie* case of obviousness, the MPEP directs that three criteria must be met: first, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references) when combined must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art and not be based on applicants' disclosure. *Id.* To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 881 (CCPA 1974).

It is submitted that the Examiner has not followed these procedures and has not met his burden in establishing a *prima facie* case of obviousness. Thus, the Examiner has not shown where Tsuyama et al. or Zimmer et al., or any other prior art of record, discloses a method which includes evaluating dynamic values associated with the front wheels of the vehicle, and if the dynamic values associated with the front wheels exceed a threshold value, increasing the normal

drive slip value of the rear wheels. With respect to claims 1-5, all the Examiner has done is to state that Tsuyama et al. disclose a method for adjusting the normal drive slip value of an ASR system and that Zimmer et al. disclose an ABS/ASR control unit and mentions that the driven wheels are rear wheels. The Examiner also stated, as mentioned above, that combining Tsuyama et al. and Zimmer et al. produces the claimed invention. However, the Examiner has not demonstrated how combining these references result in the claimed invention, i.e., he has failed to identify where limitations (a) and (b) may be found in Tsuyama et al. and Zimmer et al. Thus, he has failed to establish a *prima facie* case of obviousness. In other words, he has failed to show that even if these references are combined, they would result in the claimed invention.

Furthermore, even if combining these references would result in the claimed invention, the Examiner has failed to enunciate a cogent reason for combining these references which reason is not obtained from applicants' own disclosure. As stated above, both the motivation for the combination and the expectation for success must come from the references themselves or from readily available public knowledge, and not from the applicants' own disclosure. In the present case, the Examiner has merely combined these two references in an effort to reconstruct the claimed invention. The Examiner has not explained how anything in Tsuyama et al., Zimmer et al., or the readily available public knowledge suggests that increasing the normal drive slip values of the rear wheels when the dynamic values of the front wheels exceed a threshold value would enable a driver to drive a vehicle safely in deep snow or on a wet road. The Examiner's stated reason for combining the disclosures of Tsuyama et al. and Zimmer et al. is apparently taken from applicants' own explanation provided on page 4, lines 10-20. However, as stated above, the Examiner cannot rely on reasons contained in the applicants' disclosure unless they are also contained in the prior art or from readily available public knowledge.

With respect to claims 6-8, the Examiner has referenced the abstract of Tsuyama et al. as disclosing increasing the normal drive slip value in dependence on the current vehicle speed. In the first place, the same arguments which applied to claims 1-5 apply to claims 6-8 as well since these claims incorporate all of the limitations of claim 1 by reference. Furthermore, the abstract of Tsuyama et al. discloses adjusting the "set response velocity" when the actual slip value of the driven wheel is equal to or larger than a set value. It does not disclose adjusting the normal drive slip value in dependence on the current vehicle speed as set forth in claim 6.

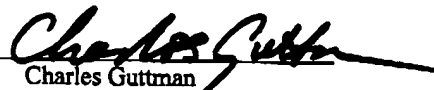
Additionally, the Examiner has apparently misread claims 7 and 8 which do not specify adjusting the normal drive slip value based on the current vehicle speed, but adjusting the rate at which the normal drive slip value is increased based on the current vehicle speed or the vehicle acceleration respectively. The Examiner has failed to identify where in the prior art the limitations set forth in claims 7 and 8 may be found.

Finally, the Examiner has entirely failed to state a reason for rejecting claim 9.

Accordingly, for these reasons, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection of claims 1-9 under 35 U.S.C. 103(a) should be withdrawn.

In view of the foregoing, it is believed that the application is condition for allowance and a favorable action on the merits is respectfully requested.

Respectfully submitted,
PROSKAUER ROSE LLP

By 
Charles Guttman
Reg. No. 29,161

Date: July 31, 2001

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